

23/2/95

U.S. Law

and Confusion - 2016

राजपूत्र, हिमाचल प्रदेश

33/58-145 (असाधारण)
हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित
33/60-145

शिनला, शुक्रवार, 21 अक्टूबर, 1994/29 भाद्रपद, 1916

हिमाचल प्रदेश सरकार

विधि विभाग

अधिसूचना

शिमला-2, 20 अक्टूबर, 1994

संख्या एल 0एल0आर0डी0 (6) 20/94-लेजिस0.—हिमाचल प्रदेश के राज्यपाल, भारत के संविधान के अनुच्छेद 200 के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए, तारीख 18 अक्तूबर, 1994 का अनुमोदित हिमाचल

प्रदेश साधारण विक्रय कर (सशोधन) विधेयक, 1994 (1994 का 14) को 1994 के हिमाचल प्रदेश अधिनियम संख्यांक 14 के रूप में संविधान के अनुच्छेद 348(3) के अधीन उसके अंग्रेजी प्राधिकृत पाठ सहित, हिमाचल प्रदेश राजपत्र में प्रकाशित करत है।

आदेश द्वारा,

कुलदीप चन्द सूद,
सचिव (विधि)।

1994 का अधिनियम संख्यांक 14.

हिमाचल प्रदेश साधारण विक्रय कर (संशोधन) अधिनियम, 1994

(राज्यपाल महोदय द्वारा तारीख 18 अक्टूबर, 1994 को यथा अनुमोदित)

हिमाचल प्रदेश जनरल सेल्ज टैक्स ऐक्ट, 1968 (1968 का 24) का और संशोधन करने के लिए अधिनियम।

भारत गणराज्य के पैतालीसवें वर्ष में हिमाचल प्रदेश विधान सभा द्वारा निम्नलिखित रूप में यह अधिनियमित हो :-

1. (1) इस अधिनियम का संक्षिप्त नाम हिमाचल प्रदेश साधारण विक्रय कर (संशोधन) अधिनियम, 1994 है। संक्षिप्त नाम और प्रारम्भ।

(2) इस धारा की उप-धारा (3) में अन्यथा उपबंधित के सिवाए, इस अधिनियम के उपबंध तुरन्त प्रवृत्त होंगे।

(3) इस अधिनियम की धारा 2 के खण्ड (a) के उप-खण्ड (ii) द्वारा यथा जोड़े गए मूल अधिनियम की धारा 2 के खण्ड (c) के नए उप-खण्ड (iv) का भाग (a) 2 फरवरी, 1983 से प्रवृत्त हुआ समझा जाएगा और इस अधिनियम की धारा 2 के खण्ड (a) और (b) के शेष उपबन्ध 13 अगस्त, 1985 से प्रवृत्त हुए समझे जाएंगे और इस अधिनियम की उक्त धारा का खण्ड (c) 2 नवम्बर, 1991 से प्रवृत्त हुआ समझा जाएगा; इस अधिनियम की धारा 4 का खण्ड (a) प्रथम जनवरी, 1991 से प्रवृत्त हुआ समझा जाएगा; इस अधिनियम की धारा 8 के खण्ड (i) और (ii) [खण्ड (ii) के परन्तुक के भाग (b) और (c) के सिवाए] 18 अप्रैल, 1992 से प्रवृत्त हुए समझे जाएंगे और धारा 8 के खण्ड (ii) के परन्तुक का भाग (b) 8 अक्टूबर, 1992 से प्रवृत्त हुआ समझा जाएगा; इस अधिनियम की धारा 9 प्रथम अगस्त, 1993 से प्रवृत्त हुई समझी जाएगी; और इस अधिनियम की धारा 10 द्वारा जोड़े गए परन्तुक के भाग (a) और भाग (b) क्रमशः 17 अगस्त, 1992 और 8 अक्टूबर, 1992 से प्रवृत्त हुए समझे जाएंगे।

2. हिमाचल प्रदेश जनरल सेल्ज टैक्स ऐक्ट, 1968 (जिसे इसमें इसके पश्चात् धारा 2 का मूल अधिनियम कहा जाएगा) की धारा 2 में,— संशोधन।

(क) खण्ड (c) में—

(i) उप-खण्ड (ii) में चिन्ह “;” के पश्चात् आए शब्द “and” का लोप किया जाएगा;

(ii) उप-खण्ड (iii) में चिन्ह “.” के स्थान पर “; and ” चिन्ह और शब्द प्रतिस्थापित किए जाएंगे और तत्पश्चात् निम्नलिखित उप-खण्ड (iv) जोड़ा जाएगा और उसका भाग (a) 2 फरवरी, 1983 से जोड़ा

गया समझा जाएगा और शेष उपबन्ध 13 अगस्त, 1985 से जोड़े गए समझे जाएंगे, अर्थात् :—

“(iv) every person engaged in the business of,—

- (a) transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration ;
- (b) transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- (c) delivery of goods on hire-purchase or any system of payment by instalments ;
- (d) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration ;
- (e) supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration ; and
- (f) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service, is for cash, deferred payment or other valuable consideration.” ;

(iii) स्पष्टीकरण (2) में शब्द “A Government”, के लिए शब्द “Every department, or its subordinate offices, of a Government” प्रतिस्थापित किए जाएंगे ;

(ख) स्पष्टीकरण 3 के पश्चात् खण्ड (iii) में निम्नलिखित स्पष्टीकरण (4) और (5) जोड़े जाएंगे और ये 13, अगस्त, 1985 से जोड़े गए समझे जाएंगे, अर्थात् :—

“(4) In respect of transactions covered under sub-clause (iii) of clause (h) and sub-clause (iii) of clause (j) of this section the amount to be included in the turnover shall be the total sum payable by the hirer under a hire-purchase agreement in order to complete the purchase of, or the acquisition of property in the goods to which the agreement relates and includes any sum as payable by the hirer under the hire purchase agreement by way of deposit or other initial payment, or credited or to be credited to him under such agreement on account of any such deposit or payment whether that sum is to be or has been paid to owner or to any person or is to be or has been discharged by payment of money or by transfer or delivery of goods or by any other means, but does not include any sum payable as a penalty or as compensation or damages for breach of the agreement.

(5) The amount to be included in the turnover in respect of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract shall be its sale price;” ; and

(ग) खण्ड (p) में शब्द और अंश “a capital investment of not more than rupees 35 lakhs” के स्थान पर “such capital investment, as may be prescribed” शब्द प्रतिस्थापित किए जाएंगे और 2 नवम्बर, 1991 से प्रतिस्थापित किए गए समझे जाएंगे।

3. मूल अधिनियम की धारा 5-A के स्थान पर निम्नलिखित धारा रखी जाएगी, धारा 5-A का प्रतिस्थापन।

“5-A. *Levy of purchase tax on certain goods.*—Where a dealer who is liable to pay tax under this Act purchases any goods other than those specified in Schedule “B” from any source, and—

- (i) uses them within the State in the manufacture of goods specified in Schedule “B”, or
- (ii) uses them within the State in the manufacture of any goods, other than those specified in Schedule “B”, and sends the goods so manufactured outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, or
- (iii) uses such goods for a purpose other than that of resale within the State or sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, or
- (iv) sends them outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India,

and no tax is payable on the purchase of such goods under any other provisions of this Act, there shall be levied a tax on the purchase of such goods equal to the rate as notified, under sub-section (1) of section 6, by the State Government.”.

4. मूल अधिनियम की धारा 6 में, उप-धारा (3) के खण्ड (a) में — धारा 6 का संशोधन।

(क) उप-खण्ड (ii) के स्थान पर निम्नलिखित उप-खण्ड प्रतिस्थापित किया जाएगा और 1 जनवरी, 1991 से प्रतिस्थापित किया गया समझा जाएगा, अर्थात्:—

“(ii) sale to a registered dealer of goods liable to tax at the last stage of sale in Himachal Pradesh, other than (a) the sale of goods specified in Schedule “C” or (b) the sale of goods liable to tax at the first stage of sale under sub-section (2), and the same is declared by him in a prescribed form as being intended for resale in the State of Himachal Pradesh or in the course of inter-State trade or commerce or sale in the course of export of goods out of the territory of India :

Provided that, in the case of such sales, a declaration duly filled and signed by the registered dealer to whom the goods are sold, containing the prescribed particulars and inscribed on the bill or cash memorandum referred to in sub-section (2) of section 19 is furnished to the assessing authority by the dealer who sells the goods :

Provided further that no dealer shall be entitled to make any deduction from his turnover in respect of a sale made by him to a registered dealer with whom composition under sub-section (2) of section 12 has been made and is in force ; ”

(ख) उप-खण्ड (iii) के पश्चात् निम्नलिखित परन्तुक जोड़ा जाएगा, अर्थात् :—

“Provided that in the case of such sales, a declaration in such form and in such manner as may be prescribed, duly filled and signed by the authorised officer of such undertaking to whom the goods are sold is furnished to the Assessing Authority by the dealer who sells the goods; ”; and

(ग) उप-खण्ड (vi) के अन्त में आए शब्द “and” का लोप किया जाएगा और तत्पश्चात् निम्नलिखित सफ्टीकरण जोड़ा जाएगा, अर्थात् :—

“Explanation.—For the purposes of sub-clause (ii) ‘the last stage of sale’ in Himachal Pradesh in respect of any goods means a stage of sale other than ‘the first stage of sale’ specified by the Government in the notification issued under sub-section (2) of section 6; and ”.

धारा 16-B का अंतः- 5. मूल अधिनियम की धारा 16-A के पश्चात् निम्नलिखित नई धारा 16-B अन्तःस्थापित की जाएगी, अर्थात् :—
स्थापन।

“16-B. Tax to be first charge on property.—Notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax and penalty including interest. if any, payable by a dealer or any other person under this Act shall be a first charge on the property of the dealer or such other person . ”.

धारा 39 का संशोधन। 6. मूल अधिनियम की धारा 39 में, उप-धारा (3) के स्थान पर निम्नलिखित उप-धारा प्रतिस्थापित की जाएगी, अर्थात् :—

“(3) Nothing contained in this section shall apply to the disclosure—

- (a) of any such particulars in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition for the purpose of any prosecution under this Act or the Indian Penal Code, 1860; or
- (b) of any such particulars to any person entrusted with the administration of this Act for the purposes of carrying out the objects of this Act ; or
- (c) of any such particulars when such disclosure is occasioned by the lawful employment under this Act of any process for the service of any notice or summons or the recovery of any demand; or
- (d) of any such particulars to a civil court in any suit to which the Government in the Excise and Taxation Department or any officer of the said Department is a party and which relates to any matter arising out of any proceeding under this Act ; or
- (e) of any such particulars to any officer appointed to audit receipts or refunds of the tax imposed by this Act ; or

xxx of 1850

- (f) of any such particulars where such particulars are relevant to any inquiry into the conduct of an official of the Excise and Taxation Department of the State Government to any person or persons appointed by the Commissioner under the Public Servants (Inquiries) Act, 1850, or to any officer otherwise appointed to hold such inquiry or to a Public Service Commission established under the Constitution when exercising its functions in relation to any matter arising out of such inquiry; or
- (g) of the annual gross turnover, shown in any return furnished or determined in any assessment order passed under this Act, to any officer of the Central or any State Government as may be necessary for the purposes of enabling that Government to levy or realise any tax or duty imposed by it; or
- (h) of any such particulars which are relevant to any inquiry into the charge of misconduct, against an income-tax practitioner or other person who represents any assessee before any authority in any proceedings under this Act; or
- (i) of any such particulars to the Director of Economics and Statistics Department of the Government of Himachal Pradesh as may be necessary for enabling him to work out the incidence of tax on any commodity or for carrying out any statistical survey of trade, commodity or dealer; and
- (j) of any such particulars for the purpose of preparing data by computerisation:

Provided that the information mentioned in clauses (a), (f) and (g) may be permitted to be disclosed by the Assistant Excise and Taxation Commissioner or the Excise and Taxation Officer, Incharge of the district only when he is satisfied, after scrutiny of the request made in this behalf and after such enquiries as he considers necessary, that the disclosure is admissible under this sub-section."

7. मूल अधिनियम की धारा 40 की उप-धारा (2) में, --

धारा 40 का संशोधन।

- (क) निम्नलिखित खण्ड (a) को खण्ड (aa) के रूप में पुनःसंख्यांकित किया जाएगा और इस प्रकार पुनःसंख्यांकित किए गए खण्ड से पूर्व निम्नलिखित नया खण्ड (a) अन्तःस्थापित किया जाएगा, अर्थात्:--

"(a) to prescribe the limit of capital investment for the purposes of clause (p) of section 2:

Provided that the State Government may, for the purposes of this clause, make rules with retrospective effect but not earlier than the 2nd day of November, 1991;";

- (ख) खण्ड (c) के पश्चात् निम्नलिखित नया खण्ड (cc) अन्तःस्थापित किया जाएगा, अर्थात्:--

"(cc) the form of declaration and the manner in which such declaration is to be furnished under sub-clause (iii) of clause (a) of sub-section (3) of section 6;"; and

(ग) खण्ड (V) के पश्चात् निम्नलिखित नया खण्ड (W) जोड़ा जाएगा, अर्थात्:—

“(iv) to prescribe the meaning of the industries specified in Explanation to sub-section (1) of section 42 .”.

धारा 42 का
संशोधन।

8. मूल अधिनियम की धारा 42 की उप-धारा (1) में, —

(i) शब्द “small scale industries” के पश्चात्

“pioneer industries, new small scale industries, tiny Industries, small service business establishment industries or other industry” चिन्ह और शब्द अन्तःस्थापित किए जाएंगे और शब्दों “or persons” दोनों स्थानों पर जहां भी वे आए हैं के पश्चात् “or such industry” शब्द अन्तः स्थापित किए जाएंगे, और 18 अप्रैल, 1992 से अन्तः स्थापित किए गए समझे जाएंगे ; और

(ii) निम्नलिखित परन्तुक जोड़ा जाएगा, अर्थात् :—

“Provided that the State Government may, for the purposes of this sub-section , issue notification exempting from tax —

(a) ‘pioneer industries’, except those mentioned in part (b) of this proviso, ‘new small scale industries’, ‘tiny industries’ and ‘small service business establishment industries’ approved by the Government with effect from the 18th day of April, 1992 ;

(b) ‘pioneer industries’ manufacturing vegetable ghee and refined oil with effect from the 8th day of October, 1992 ; and

(c) ‘other industry’ from the date of the publication of the notification.

Explanation.—In this proviso the expressions ‘pioneer industries’, ‘new small scale industries’, ‘tiny industries’, ‘small service business establishment industries’ and ‘other industry’ shall have the meanings as may be prescribed .”.

धारा 42-A
का संशोधन।

9. मूल अधिनियम की धारा 42-A में उप-धारा (1) के पश्चात् निम्नलिखित स्पष्टीकरण जोड़ा जाएगा, और इसे प्रथम अगस्त, 1993 से जोड़ा गया समझा जाएगा, अर्थात् :—

“*Explanation.*—For the purposes of this sub-section the expression “new industrial units” shall also include “new tourism units” with effect from the 1st day of August, 1993.”.

धारा 42-B
का संशोधन।

10. मूल अधिनियम की धारा 42-B के परन्तुक के पश्चात् निम्नलिखित परन्तुक जोड़े जाएंगे, अर्थात् :—

“Provided further that the State Government may, by notification, allow the transfer of goods, in the course of inter-State trade or commerce, to such extent of the aggregate sales shown by the dealer in his returns for a financial year as may be specified in such notification :

Provided also that the State Government may, for the purposes of the preceding proviso, issue notification retrospectively—

(a) allowing transfer of goods upto twenty-five per cent with effect from the 17th day of August, 1992; and

- (b) allowing transfer of goods upto one hundred per cent with effect from the 8th day of October, 1992 .”.

11. (1) The provisions of the principal Act relating to tax on the sale or purchase of goods shall be deemed to include, and shall be deemed always to have included, a tax (hereinafter in this section referred to as the aforesaid tax) on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) for cash, deferred payment or other valuable consideration, and every transaction by way of supply of the nature referred to above made before or after the commencement of the Constitution (Forty sixth Amendment) Act, 1982 shall be deemed to be, and shall be deemed always to have been, a transaction by way of sale, with respect to which the person making such supply is the seller and the person to whom such supply is made, is the purchaser, and notwithstanding any judgment, decree or order of any court, tribunal or authority, no provision of the principal Act which imposed or authorised the imposition of, or purported to impose or authorise the imposition of, the aforesaid tax shall be deemed to be invalid or ever to have been invalid, and accordingly,—

कतिपय उप-
बंधों का
भूतलक्षी
प्रभाव, विधि-
मान्यकरण
और छूट ।

- (a) the aforesaid tax levied or collected or purporting to have been levied or collected under the principal Act shall be deemed always to have been validly levied or collected in accordance with law ;
- (b) all acts, proceedings or things done or actions taken in connection with the assessment and re-assessment of the aforesaid tax by any officer appointed by the State Government under the principal Act shall be and shall always be deemed to have been done or taken in accordance with law ;
- (c) no suit or other proceeding shall be maintained or continued in any court or before any tribunal or authority for the refund of, and no enforcement shall be made by any court, tribunal or authority of any decree or order directing the refund of any such aforesaid tax which has been collected ; and
- (d) assessment, re-assessment and recoveries of aforesaid tax if not already made, shall be made in accordance with the principal Act, as amended by this Act, notwithstanding anything contained in the principal Act.

(2) Notwithstanding anything contained in sub-section (1), any supply of the nature referred to therein shall be exempt from the aforesaid tax,—

- (a) where such supply has been made by any restaurant or eating house (by whatever name called) at any time on or after the 7th day of September, 1978 and before the commencement of the Himachal Pradesh General Sales Tax (Amendment) Act, 1985 and the aforesaid tax has not been collected on such supply on the ground that no such tax could have been levied or collected at that time; or
- (b) where such supply, not being any such supply by any restaurant or eating house (by whatever name called), has been made at any time on or after the 4th day of January, 1972, and before the commencement of the Himachal Pradesh General Sales Tax

(Amendment) Act, 1983 and the aforesaid tax has not been collected on such supply on the ground that no such tax could have been levied or collected at that time

(1) (a) Part (a) of sub-clause (b) of clause (c) of section 2 of the principal Act, as added by sub-clause (ii) of clause (a) of section 2 of this Act shall be and shall be deemed to have been added with effect from the 2nd day of February, 1983.

(b) Notwithstanding anything contained in the Himachal Pradesh General Sales Tax (Amendment) Act, 1983, sub-clause (i) each of the clauses (b) and (c) of section 2 of the principal Act shall be and shall be deemed to have been substituted with effect from the 2nd day of February, 1983.

(c) Notwithstanding anything contained in any judgement, decree or order of any court, tribunal or other authority, all taxes levied or collected or purported to have been levied or collected from the said date in relation to the goods referred in part (a) of sub-clause (b) of clause (c) of section 2 of the principal Act, as added by sub-clause (ii) of clause (a) of section 2 of this Act, and sub-clause (i) each of clauses (b) and (c) of section 2 of the principal Act, shall be deemed to be and to have always been validly levied or collected in accordance with law as if this provision had been in force at all material times when such tax was levied or collected and accordingly,

(i) all acts, proceedings or things done or taken in connection with the levy or collection of such tax by the person appointed by the State Government under the principal Act shall, for all purposes, be deemed to be and to have always been validly done or taken in accordance with law ;

(ii) no suit or other proceedings shall be maintained or continued in any court or before any tribunal or other authority for the refund of any tax so paid ; and

(iii) no court, tribunal or other authority shall enforce any decree or order directing the refund of any tax so paid.

(4) *In the removal of doubts, it is hereby declared that nothing in sub-section (1), and clause (c) of sub-section (3), of this section shall be construed as preventing any person*

(i) from questioning in accordance with the provisions of the principal Act, the assessment, re-assessment, levy or collection of the aforesaid tax ; or

(ii) from claiming refund of the aforesaid tax paid by him in excess of the amount due from him under any such law.

AUTHORITATIVE ENGLISH TEXT

Act No. 14 of 1994.

THE HIMACHAL PRADESH GENERAL SALES TAX (AMENDMENT) ACT, 1994

(As Amended to by the Government on 18th October, 1994)

AN

ACT

Further to amend the Himachal Pradesh General Sales Tax Act, 1968 (Act No. 24 of 1968).

Enacted by the Legislative Assembly of Himachal Pradesh in the Forty-fifth Year of the Republic of India as follows:

1. (1) This Act may be called the Himachal Pradesh General Sales Tax (Amendment) Act, 1994.

Short title and commencement.

(2) Save as otherwise provided in sub-section (4) of this section, the provisions of this Act shall come into force at once.

(3) Part (a) of the new sub-clause (f) of clause (c) of section 2 of the principal Act, as added by sub-clause (ii) of clause (a) of section 2 of this Act shall be deemed to have come into force with effect from the 2nd day of February, 1983 and the remaining provisions of clauses (a) and (b) of section 2 of this Act shall be deemed to have come into force with effect from the 13th day of August, 1985 and clause (c) of the said section of this Act shall be deemed to have come into force with effect from the 2nd day of November, 1991; clause (a) of section 4 of this Act shall be deemed to have come into force with effect from the 1st day of January, 1991; clauses (i) and (ii) except parts (b) and (c) of the proviso of clause (ii) of section 8 of this Act shall be deemed to have come into force with effect from the 18th day of April, 1992 and part (b) of the proviso of clause (ii) of the said section 8 shall be deemed to have come into force with effect from the 8th day of October, 1992; section 9 of this Act shall be deemed to have come into force with effect from the 1st day of August, 1991; and part (a) and part (b) of the proviso added by section 10 of this Act shall respectively be deemed to have come into force with effect from the 17th day of August, 1992 and 8th day of October, 1992.

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2. In section 2 of the Himachal Pradesh General Sales Tax Act, 1968 (hereinafter referred to as the principal Act),

Amendment of section 2.

(a) in clause (c)

(i) in sub-clause (ii), the word "and" occurring after the sign "i" shall be omitted;

(ii) in sub-clause (iii), for the sign ":", the sign and the word "and" shall be substituted and thereafter the following sub-clause (iv), shall be added and part (a) thereof shall be deemed to have been added, with effect from the 2nd day of

February, 1983 and the remaining provisions shall be deemed to have been added with effect from the 13th day of August, 1985, namely: -

“(iv) every person engaged in the business of,-

- (a) transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration ;
- (b) transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract ;
- (c) delivery of goods on hire purchase or any system of payment by instalments ;
- (d) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration ;
- (e) supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration ; and
- (f) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service, is for cash, deferred payment or other valuable consideration.”

(iii) in Explanation (2), for the words “A Government”, the words “Every department, or its subordinate offices, of a Government” shall be substituted ;

(b) in clause (m), after Explanation (3), the following Explanations (4) and (5) shall be added and shall be deemed to have been added, with effect from the 13th day of August, 1985, namely:—

“(4) In respect of transactions covered under sub-clause (iii) of clause (h) and sub-clause (iii) of clause (j) of this section the amount to be included in the turnover shall be the total sum payable by the hirer under a hire-purchase agreement in order to complete the purchase of, or the acquisition of property in the goods to which the agreement relates and includes any sum as payable by the hirer under the hire-purchase agreement by way of deposit or other initial payment, or credited or to be credited to him under such agreement on account of any such deposit or payment whether that sum is to be or has been paid to owner or to any person or is to be or has been discharged by payment of money or by transfer or delivery of goods or by any other means, but does not include any sum payable as a penalty or as compensation or damages for breach of the agreement.

(5) The amount to be included in the turnover in respect of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract shall be its sale price;” and

- (e) in clause (p), for the words and figure "a capital investment of not more than rupees 35 lakhs", the words "such capital investment, as may be prescribed" shall be substituted and shall be deemed to have been substituted, with effect from the 2nd day of November, 1991.

3. For section 5-A of the principal Act, the following shall be substituted, namely:—

Substitution
of section 5-A.

"5-A. Levy of purchase tax on certain goods.—Where a dealer who is liable to pay tax under this Act purchases any goods other than those specified in Schedule "B" from any source, and—

- (i) uses them within the State in the manufacture of goods specified in Schedule "B", or
- (ii) uses them within the State in the manufacture of any goods, other than those specified in Schedule "B" and sends the goods so manufactured outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, or
- (iii) uses such goods for a purpose other than that of resale within the State or sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, or
- (iv) sends them outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India,

and no tax is payable on the purchase of such goods under any other provisions of this Act, there shall be levied a tax on the purchase of such goods equal to the rate as notified, under sub-section (1) of section 6, by the State Government."

4. In section 6 of the principal Act, in sub-section (3), in clause (a),—

Amendment
of section 6.

- (a) for sub-clause (ii), the following shall be substituted and shall be deemed to have been substituted, with effect from the 1st day of January, 1991, namely:—

"(ii) sale to a registered dealer of goods liable to tax at the last stage of sale in Himachal Pradesh, other than (a) the sale of goods specified in Schedule 'C' or (b) the sale of goods liable to tax at the first stage of sale under sub-section (2), and the same is declared by him in a prescribed form as being intended for resale in the State of Himachal Pradesh or in the course of inter-State trade or commerce or sale in the course of export of goods out of the territory of India:

Provided that, in the case of such sales, a declaration duly filled and signed by the registered dealer to whom the goods are sold, containing the prescribed particulars and inscribed on the bill or cash memorandum referred to in sub-section (2) of section 19 is furnished to the assessing authority by the dealer who sells the goods:

Provided further that no dealer shall be entitled to make any deduction from his turnover in respect of a sale made by him to a registered dealer with whom composition under sub-section (2) of section 12 has been made and is in force;”

(b) after sub-clause (iii), the following proviso shall be added, namely:—

“Provided that in the case of such sales, a declaration in such form and in such manner as may be prescribed, duly filled and signed by the authorised officer of such undertaking to whom the goods are sold is furnished to the Assessing Authority by the dealer who sells the goods;” and

(c) in sub-clause (vi), the word “and” occurring at the end shall be omitted and thereafter the following Explanation shall be added, namely:—

“*Explanation.*—For the purposes of sub-clause (ii) ‘the last stage of sale’ in Himachal Pradesh in respect of any goods means a stage of sale other than ‘the first stage of sale’ specified by the Government in the notification issued under sub-section (2) of section 6; and”.

Insertion of
section 16-
B.

5. After section 16-A of the principal Act, the following new section 16-B, shall be inserted, namely:—

“16-B. *Tax to be first charge on property.*—Notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax and penalty including interest, if any, payable by a dealer or any other person under this Act shall be a first charge on the property of the dealer or such other person.”.

Amendment
of section
39.

6. In section 39 of the principal Act, for sub-section (3), the following shall be substituted, namely:—

“(3) Nothing contained in this section shall apply to the disclosure—

- (a) of any such particulars in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition for the purpose of any prosecution under this Act or the Indian Penal Code, 1860; or
- (b) of any such particulars to any person entrusted with the administration of this Act for the purposes of carrying out the objects of this Act; or
- (c) of any such particulars when such disclosure is occasioned by the lawful employment under this Act of any process for the service of any notice or summons or the recovery of any demand; or
- (d) of any such particulars to a civil court in any suit to which the Government in the Excise and Taxation Department or any officer of the said Department is a party and which relates to any matter arising out of any proceeding under this Act; or
- (e) of any such particulars to any officer appointed to audit receipts or refunds of the tax imposed by this Act; or

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- (f) of any such particulars where such particulars are relevant to any inquiry into the conduct of an official of the Excise and Taxation Department of the State Government to any person or persons appointed by the Commissioner under the Public Servants (Inquiries) Act, 1850, or to any officer otherwise appointed to hold such inquiry or to a Public Service Commission established under the Constitution when exercising its functions in relation to any matter arising out of such inquiry ; or
- (g) of the annual gross turnover, shown in any return furnished or determined in any assessment order passed under this Act, to any officer of the Central or any State Government as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty imposed by it; or
- (h) of any such particulars which are relevant to any inquiry into the charge of misconduct, against an income-tax practitioner or other person who represents any assessee before any authority in any proceedings under this Act ; or
- (i) of any such particulars to the Director of Economics and Statistics Department of the Government of Himachal Pradesh as may be necessary for enabling him to work out the incidence of tax on any commodity or for carrying out any statistical survey of trade, commodity or dealer; and
- (j) of any such particulars for the purpose of preparing data by computerisation :

Provided that the information mentioned in clauses (a), (f) and (g) may be permitted to be disclosed by the Assistant Excise and Taxation Commissioner or the Excise and Taxation Officer, Incharge of the district only when he is satisfied, after scrutiny of the request made in this behalf and after such enquiries as he considers necessary, that the disclosure is admissible under this sub-section."

7. In section 40 of the principal Act, in sub-section (2),—

- (a) the existing clause (a) shall be re-numbered as clause (aa) and before the clause as so re-numbered, the following new clause (a) shall be inserted, namely:—

"(a) to prescribe the limit of capital investment for the purposes of clause (p) of section 2 :

Provided that the State Government may, for the purposes of this clause, make rules with retrospective effect but not earlier than the 2nd day of November, 1991;";

- (b) after clause (c), the following new clause (cc) shall be inserted, namely:—

"(cc) the form of declaration and the manner in which such declaration is to be furnished under sub-clause (iii) of clause (a) of sub-section (3) of section 6;"; and

Amendment
of section
40.

(c) after clause (v), the following new clause (w), shall be added, namely:—

“(w) to prescribe the meaning of the industries specified in Explanation to sub-section (1) of section 42.”.

Amendment
of section
42.

8 In section 42 of the principal Act, in sub-section(1),—

(i) after the words “small scale industries”, the signs and words, “pioneer industries, new small scale industries, tiny industries, small service business establishment industries or other industry” shall be inserted, and after the words “or persons” at both the places where they occur, the words “or such industry” shall be inserted, and shall be deemed to have been inserted, with effect from the 18th day of April, 1992; and

(ii) the following proviso shall be added, namely:—

“Provided that the State Government may, for the purposes of this sub-section, issue notification exempting from tax—

(a) ‘pioneer industries’, except those mentioned in part (b) of this proviso, ‘new small scale industries’, ‘tiny industries’ and ‘small service business establishment industries’ approved by the Government with effect from the 18th day of April, 1992;

(b) ‘pioneer industries’ manufacturing vegetable ghee and refined oil with effect from the 8th day of October, 1992; and

(c) ‘other industry’ from the date of the publication of the notification.

Explanation.—In this proviso the expressions ‘pioneer industries’, ‘new small scale industries’, ‘tiny industries’, ‘small service business establishment industries’ and ‘other industry’ shall have the meanings as may be prescribed.”.

Amendment
of section
42-A.

9. In section 42-A of the principal Act, after sub-section (1), the following Explanation shall be added and shall be deemed to have been added, with effect from the 1st day of August, 1993, namely:—

“*Explanation.*—For the purposes of this sub-section the expression “new industrial units” shall also include “new tourism units” with effect from the 1st day of August, 1993.”.

Amendment
of section
42-B.

10. In section 42-B of the principal Act, after the proviso, the following provisos shall be added, namely:—

“Provided further that the State Government may, by notification, allow the transfer of goods, in the course of inter-State trade or commerce, to such extent of the aggregate sales shown by the dealer in his returns for a financial year as may be specified in such notification:

Provided also that the State Government may, for the purposes of the preceding proviso, issue notification retrospectively.

- (a) allowing transfer of goods upto twenty-five per cent with effect from the 17th day of August, 1992; and
- (b) allowing transfer of goods upto one hundred per cent with effect from the 8th day of October, 1992."

11. (1) The provisions of the principal Act relating to tax on the sale or purchase of goods shall be deemed to include, and shall be deemed always to have included, a tax (hereinafter in this section referred to as the aforesaid tax) on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) for cash, deferred payment or other valuable consideration, and every transaction by way of supply of the nature referred to above made before or after the commencement of the Constitution (Forty-sixth Amendment) Act, 1982 shall be deemed to be, and shall be deemed always to have been, a transaction by way of sale, with respect to which the person making such supply is the seller and the person to whom such supply is made, is the purchaser, and notwithstanding any judgment, decree or order of any court, tribunal or authority, no provision of the principal Act which imposed or authorised the imposition of, or purported to impose or authorise the imposition of, the aforesaid tax shall be deemed to be invalid or ever to have been invalid, and accordingly,—

Retrospective effect to certain provisions, validation and exemption.

- (a) the aforesaid tax levied or collected or purporting to have been levied or collected under the principal Act shall be deemed always to have been validly levied or collected in accordance with law ;
- (b) all acts, proceedings or things done or actions taken in connection with the assessment and reassessment of the aforesaid tax by any officer appointed by the State Government under the principal Act shall be and shall always be deemed to have been done or taken in accordance with law ;
- (c) no suit or other proceeding shall be maintained or continued in any court or before any tribunal or authority for the refund of, and no enforcement shall be made by any court, tribunal or authority of any decree or order directing the refund of any such aforesaid tax which has been collected ; and
- (d) assessment, re-assessment and recoveries of aforesaid tax if not already made, shall be made in accordance with the principal Act, as amended by this Act, notwithstanding anything contained in the principal Act.

(2) Notwithstanding anything contained in sub-section (1), any supply of the nature referred to therein shall be exempt from the aforesaid tax.

- (a) where such supply has been made by any restaurant or eating house (by whatever name called) at any time on or after the 7th day of September, 1978 and before the commencement of the Himachal Pradesh General Sales Tax (Amendment) Act, 1985 and the aforesaid tax has not been collected on such supply on the ground that no such tax could have been levied or collected at that time ; or

(b) where such supply, not being any such supply by any restaurant or eating house (by whatever name called), has been made at any time on or after the 4th day of January, 1972 and before the commencement of the Himachal Pradesh General Sales Tax (Amendment) Act, 1985 and the aforesaid tax has not been collected on such supply on the ground that no such tax could have been levied or collected at that time.

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(3) (a) Part (a) of sub-clause (iv) of clause (c) of section 2 of the principal Act, as added by sub-clause (ii) of clause (a) of section 2 of this Act shall be and shall be deemed to have been added with effect from the 2nd day of February, 1983.

(b) Notwithstanding anything contained in the Himachal Pradesh General Sales Tax (Amendment) Act, 1985, sub-clause (i) each of the clauses (h) and (j) of section 2 of the principal Act shall be and shall be deemed to have been substituted with effect from the 2nd day of February, 1983.

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(c) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, all taxes levied or collected or purported to have been levied or collected from the said date in relation to the goods referred in part (a) of sub-clause (iv) of clause (c) of section 2 of the principal Act, as added by sub-clause (ii) of clause (a) of section 2 of this Act, and sub-clause (i) each of clauses (h) and (j) of section 2 of the principal Act, shall be deemed to be and to have always been validly levied or collected in accordance with law as if this provision had been in force at all material times when such tax was levied or collected and accordingly,—

- (i) all acts, proceedings or things done or taken in connection with the levy or collection of such tax by the person appointed by the State Government under the principal Act shall, for all purposes, be deemed to be and to have always been validly done or taken, in accordance with law ;
- (ii) no suit or other proceedings shall be maintained or continued in any court or before any tribunal or other authority for the refund of any tax so paid ; and
- (iii) no court, tribunal or other authority shall enforce any decree or order directing the refund of any tax so paid.

(4) For the removal of doubts, it is hereby declared that nothing in sub-section (1), and clause (c) of sub-section (3), of this section shall be construed as preventing any person—

- (i) from questioning in accordance with the provisions of the principal Act, the assessment, re-assessment, levy or collection of the aforesaid tax ; or
- (ii) from claiming refund of the aforesaid tax paid by him in excess of the amount due from him under any such law.